

Chapter 722

(House Bill 1411)

AN ACT concerning

Environment – Water Management Administration – Wetlands and Waterways Program Fees

FOR the purpose of altering certain application fees for ~~major wetlands and waterways projects~~, minor wetlands and waterways projects, and major and minor modifications; prohibiting the Department of the Environment from requiring application fees for the installation of certain lifts or for certain maintenance, repair, or replacement under certain circumstances; prohibiting certain fees from being modified without legislative enactment; requiring the Board of Public Works to establish a minimum compensation rate for certain structures in accordance with certain requirements; authorizing the Board to adjust the compensation rate under certain circumstances; requiring the Department of the Environment to convene a certain workgroup to review and assess a certain program and to report to certain legislative committees on or before a certain date; defining certain terms; altering certain definitions; making stylistic changes; establishing the intent of the General Assembly; and generally relating to wetlands and waterways program fees.

BY repealing and reenacting, with amendments,

Article – Environment

Section 5–203.1 and 16–205

Annotated Code of Maryland

(2007 Replacement Volume and 2011 Supplement)

Preamble

WHEREAS, It is essential to the health and vitality of the Chesapeake and Atlantic Coastal Bays that all wetlands and waterways within the State are adequately protected through the permitting and licensing programs administered by the Department of the Environment; and

WHEREAS, Past constraints on the Department's General Fund appropriation have limited the Department's effective protection of the State's water resources and have delayed the processing of permits which negatively impact State business interests; and

WHEREAS, The continued assessment of application fees will enable the Department to render permit decisions more quickly and efficiently, even though processing delays are often the result of requirements outside the control of the

Department, including review by other governmental agencies, procedures for public participation, and the failure of an applicant to submit complete and timely information to the Department; and

WHEREAS, It is the intent of the General Assembly that the goals of the statewide wetlands and waterways program be furthered by effectively protecting the State's wetland and water resources and by providing sound guidance and efficient service to applicants; and

WHEREAS, It is the intent of the General Assembly that the most equitable way to fund the full and effective administration of a statewide wetlands and waterways program in the Department is through reasonable application fees and General Fund appropriations; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Environment

5–203.1.

(a) (1) In this section the following words have the meanings indicated.

(2) (I) **“COMMERCIAL ACTIVITY” MEANS A PROJECT OR ACTIVITY UNDERTAKEN FOR CONSIDERATION, REGARDLESS OF WHETHER A PROFIT IS MADE.**

(II) **“COMMERCIAL ACTIVITY” INCLUDES:**

1. **A SUBDIVISION;**
2. **A DEVELOPMENT; AND**
3. **CONSTRUCTING OR OPERATING A MARINA.**

(3) **“COMMERCIAL BUILDING” MEANS A BUILDING THAT IS USED PRIMARILY FOR COMMERCIAL ACTIVITY.**

(4) **“DEVELOPMENT” MEANS A PROJECT FOR THE CONSTRUCTION OF:**

- (I) **TWO OR MORE RESIDENTIAL DWELLING UNITS;**
- (II) **A COMMERCIAL STRUCTURE; OR**

(III) AN INDUSTRIAL STRUCTURE.**(5) “DWELLING UNIT” MEANS A PROPERTY THAT CONTAINS:****(I) ONE OR MORE ROOMS USED AS A RESIDENCE;****(II) KITCHEN FACILITIES; AND****(III) BATHROOM FACILITIES.****[(2)] (6) “Major project” means a project that:**

(i) Proposes to permanently impact 5,000 square feet or more of wetlands or waterways, including the 100–year floodplain;

(ii) [Is located in an area identified as potentially impacting threatened or endangered species or species in need of conservation by a geographical information system database that:

1. Includes sensitive species project review areas and waterfowl concentration and staging areas;

2. Has been developed and maintained by the Department of Natural Resources; and

3. Is used by the Department to screen incoming applications;

(iii) Is located in an area that has been identified as potentially impacting historical or archaeological resources by a geographical information system database that:

1. Includes Maryland archaeological sites, the Maryland Inventory of Historic Properties, the National Register of Historic Places, the Maryland Historical Trust Preservation Easements, the Annapolis Maryland Inventory of Historic Properties, and the Annapolis Maryland Inventory of Historic Properties street map;

2. Has been developed and maintained by the Maryland Historical Trust; and

3. Is used by the Department to screen incoming applications;

(iv)] Is located in an area identified as potentially impacting a nontidal wetland of special State concern by a geographical information system database that:

1. Has been developed and maintained by the Department of Natural Resources; and

2. Is used by the Department to screen incoming applications; OR

[(v) Is adjacent to Use III or Use IV waters, as defined in regulation by the Department; or

(vi)] (III) Requires the issuance of a public notice by the Department.

(7) “MARINA” MEANS A FACILITY FOR THE MOORING, DOCKING, OR STORING OF MORE THAN 10 VESSELS ON TIDAL NAVIGABLE WATERS, INCLUDING A COMMERCIAL, NONCOMMERCIAL, OR COMMUNITY FACILITY.

[(3)] (8) “Minor project” means a project that:

(i) Proposes to permanently impact less than 5,000 square feet of wetlands or waterways, including the 100–year floodplain; and

(ii) Does not meet the definition of a major project.

(9) “RESIDENTIAL ACTIVITY” MEANS A NONCOMMERCIAL ACTIVITY THAT IS CONDUCTED ON RESIDENTIAL PROPERTY.

(10) (I) “RESIDENTIAL PROPERTY” MEANS IMPROVED PROPERTY THAT IS USED PRIMARILY AS A RESIDENCE OR UNIMPROVED PROPERTY THAT IS ZONED FOR USE AS A RESIDENCE.

(II) “RESIDENTIAL PROPERTY” INCLUDES:

1. PROPERTY OWNED BY A HOMEOWNERS’ ASSOCIATION; AND

2. A CONDOMINIUM.

(III) “RESIDENTIAL PROPERTY” DOES NOT INCLUDE:

1. A COMMERCIAL BUILDING;

2. A MARINA; OR

3. A RESIDENTIAL APARTMENT COMPLEX OR BUILDING.

(11) (I) "SUBDIVISION" MEANS THE DIVISION OF A LOT, TRACT, OR PARCEL OF LAND INTO TWO OR MORE LOTS, PLOTS, SITES, TRACTS, PARCELS, OR OTHER DIVISIONS FOR THE IMMEDIATE OR FUTURE PURPOSE OF SELLING OR DEVELOPMENT.

(II) "SUBDIVISION" INCLUDES RESUBDIVISION.

(b) (1) Except as provided under [paragraph] PARAGRAPHS (2) AND (3) of this subsection, all applications for wetlands and waterways authorizations issued by the Department under §§ 5-503[,] AND 5-906[,] OF THIS TITLE AND §§ 16-202, 16-302, and 16-307 of this article or wetlands licenses issued by the Board of Public Works under § 16-202 of this article shall be accompanied by an application fee as follows:

(i) For an application for a minor project or general permit.....\$750;

(ii) For an application for a minor modification.....[\$500] **\$250**;

(iii) For an application for a major project [or major modification with a proposed permanent impact of], ~~\$2,000 AND A FEE FOR~~ WITH A PROPOSED PERMANENT IMPACT OF:

1. Less than 1/4 acre.....~~[\$1,500] \$500~~;

2. At least 1/4 acre, but less than 1/2 acre.....\$3,000;

3. At least 1/2 acre, but less than 3/4 acre.....\$4,500;

4. At least 3/4 acre, but less than 1 acre.....\$6,000; and

5. 1 acre or more.....the impact area in acres multiplied by \$7,500; AND

(IV) FOR AN APPLICATION FOR A MAJOR
MODIFICATION.....~~\$2,000~~ \$1,500.

(2) The following are exempt from the application fees established under paragraph (1) of this subsection:

(i) Regulated activities conducted by the State, a municipal corporation, county, bicounty or multicounty agency under Article 28 of the Code or Division II of the Public Utilities Article, or a unit of the State, a municipal corporation, or a county;

(ii) Performance of agricultural best management practices contained in a soil conservation and water quality plan approved by the appropriate soil conservation district;

(iii) Performance of forestry best management practices contained in an erosion and sediment control plan:

1. Prepared by a registered forester; and
2. Approved by the appropriate soil conservation district;

(iv) Stream restoration, vegetative shoreline stabilization, wetland creation, or other project in which the primary effect is to enhance the State's wetland or water resources; and

(v) Aquacultural activities for which the Department of Natural Resources has issued a permit under [§ 4-11A-02] **TITLE 4, SUBTITLE 11A** of the Natural Resources Article.

(3) [For purposes of this subsection, a mining activity undertaken on affected land as identified in a permit issued under Title 15 of this article shall be:

- (i) Deemed to be a minor project; and
- (ii) Subject to the appropriate application fee under paragraph (1)(i) and (ii) of this subsection.] **EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION, THE FOLLOWING SHALL BE MINOR PROJECTS AND SUBJECT TO THE APPROPRIATE APPLICATION FEE UNDER PARAGRAPH (1)(I) AND (II) OF THIS SUBSECTION:**

(I) A RESIDENTIAL ACTIVITY ISSUED A PERMIT UNDER §§ 5-503 AND 5-906 OF THIS TITLE AND §§ 16-202, 16-302, AND 16-307 OF THIS ARTICLE; AND

(II) A MINING ACTIVITY UNDERTAKEN ON AFFECTED LAND AS IDENTIFIED IN A PERMIT ISSUED UNDER TITLE 15 OF THIS ARTICLE.

(4) SUBJECT TO PARAGRAPH (5) OF THIS SUBSECTION, AN APPLICATION FOR THE FOLLOWING MINOR PROJECTS SHALL BE ACCOMPANIED BY THE FOLLOWING APPLICATION FEES:

(I) INSTALLATION OF ONE BOAT LIFT, HOIST, OR PERSONAL WATERCRAFT LIFT AT EACH AUTHORIZED SLIP, NOT EXCEEDING FOUR SLIPS, LIFTS, OR HOISTS PER PIER..... \$300;

(II) INSTALLATION OF A MAXIMUM OF SIX MOORING PILINGS.....\$300;

(III) IN-KIND REPAIR AND REPLACEMENT OF STRUCTURES.....\$300;

(IV) INSTALLATION OF A FIXED OR FLOATING PLATFORM ON AN EXISTING PIER WHERE THE TOTAL PLATFORM AREA DOES NOT EXCEED 200 SQUARE FEET.....\$300;

(V) CONSTRUCTION OF A NONHABITABLE STRUCTURE THAT PERMANENTLY IMPACTS LESS THAN 1,000 SQUARE FEET, SUCH AS A DRIVEWAY, DECK, POOL, SHED, OR FENCE..... \$300;

(VI) REPLACEMENT OF AN EXISTING BULKHEAD WHERE THE REPLACEMENT BULKHEAD DOES NOT EXCEED MORE THAN 18 INCHES CHANNELWARD OF THE EXISTING STRUCTURE..... \$500; AND

(VII) IN-KIND REPAIR AND REPLACEMENT OF EXISTING INFRASTRUCTURE.....\$500.

(5) THE DEPARTMENT MAY NOT REQUIRE AN APPLICATION FEE FOR ~~THE~~:

(I) THE INSTALLATION OF A BOATLIFT, HOIST, OR PERSONAL WATERCRAFT LIFT ON EXISTING PILINGS; OR

(II) IF THE EXISTING STRUCTURE IS FUNCTIONAL AND THERE IS NO INCREASE IN THE ORIGINAL LENGTH, WIDTH, HEIGHT, OR CHANNELWARD ENCROACHMENT AUTHORIZED UNDER § 16-202, § 16-302, OR § 16-307 OF THIS ARTICLE, THE ROUTINE MAINTENANCE, REPAIR, OR REPLACEMENT OF:

1. *A HIGHWAY STRUCTURE;*
2. *A PIER;*
3. *A BOATHOUSE;*
4. *A STRUCTURE ON A PIER;*
5. *A BULKHEAD;*
6. *A REVETMENT;*
7. *A TIDAL IMPOUNDMENT DIKE;*
8. *A WATER CONTROL STRUCTURE;*
9. *AN ABOVEGROUND TRANSMISSION FACILITY;*
10. *AN AGRICULTURAL DRAINAGE DITCH; OR*
11. *A HIGHWAY DRAINAGE DITCH.*

~~[(4)] (6) Except as provided in paragraph [(5)] (7) of this subsection, the *THE* fees imposed under this subsection may not be modified prior to January 1, 2012 WITHOUT LEGISLATIVE ENACTMENT.~~

~~[(5)] (7) (i) The *SUBJECT TO PARAGRAPH (6) OF THIS SUBSECTION, THE* Department may adjust the fees established under [paragraph] PARAGRAPHS (1) AND (4) of this subsection to reflect changes in the consumer price index for all “urban consumers” for the expenditure category “All items not seasonally adjusted”, and for all regions.~~

(ii) The Annual Consumer Price Index for the period ending each December, as published by the Bureau of Labor Statistics of the U.S. Department of Labor, shall be used to adjust the fees established under [paragraph] PARAGRAPHS (1) AND (4) of this subsection.

(c) (1) There is a Wetlands and Waterways Program Fund.

(2) The Department shall administer the Fund.

(3) The Treasurer shall hold the Fund separately and the Comptroller shall account for the Fund.

(4) The Fund consists of all:

(i) Application fees collected by the Department under this section;

(ii) Monetary compensation paid to the State in conjunction with a wetlands license other than that compensation specified in § 16–205(c)(2) of this article;

(iii) Money appropriated in the State budget to the Fund; and

(iv) Investment earnings, interest, and any other money from any other source accepted for the benefit of the Fund.

(5) In accordance with subsection (e) of this section, the Department shall use the Wetlands and Waterways Program Fund for activities related to:

(i) The issuance of authorizations by the Department under §§ 5–503[,] AND 5–906[,] OF THIS TITLE AND §§ 16–202, 16–302, and 16–307 of this article or the issuance of wetlands licenses by the Board of Public Works under § 16–202 of this article;

(ii) The management, conservation, protection, and preservation of the State's wetlands and waterways resources; and

(iii) Program development associated with Title 5 and Title 16 of this article, as provided by the State budget.

(d) On or before December 31 of each year, in accordance with § 2–1246 of the State Government Article, the Department shall prepare and submit an annual report to the House Environmental Matters Committee, the House Appropriations Committee, the Senate Education, Health, and Environmental Affairs Committee, and the Senate Budget and Taxation Committee on the Wetlands and Waterways Program Fund, including an accounting of financial receipts deposited into the Fund and expenditures from the Fund.

(e) The Department shall:

(1) Prioritize the use of the Wetlands and Waterways Program Fund to improve the level of service to the regulated community; and

(2) Identify and implement measures that will reduce delays and duplication in the administration of the wetlands and waterways permit process, including the processing of applications for wetlands and waterways permits in accordance with § 1–607 of this article.

16–205.

(a) The Board may require as a condition to issuance of a wetlands license that compensation be made to the State, of a kind and in an amount deemed appropriate by the Board.

(B) (1) THE BOARD SHALL ESTABLISH A COMPENSATION RATE FOR CABLES, PIPELINES, OR SIMILAR STRUCTURES IN ACCORDANCE WITH THIS SUBSECTION.

(2) THE MINIMUM COMPENSATION RATE:

(I) IS \$2.50 PER LINEAR FOOT PER YEAR FOR CABLES, PIPELINES, OR SIMILAR STRUCTURES;

(II) APPLIES TO EACH INDIVIDUAL CABLE, PIPELINE, OR SIMILAR STRUCTURE; AND

(III) APPLIES TO ALL NEW AND EXISTING AUTHORIZATIONS BEGINNING JULY 2, 2012.

(3) THE BOARD MAY:

(I) INCREASE THE COMPENSATION RATE AS CONSIDERED APPROPRIATE; AND

(II) ADJUST THE COMPENSATION RATE TO REFLECT CHANGES IN THE CONSUMER PRICE INDEX AS PUBLISHED BY THE BUREAU OF LABOR STATISTICS OF THE U.S. DEPARTMENT OF LABOR OR BY AN APPROPRIATE METHOD SELECTED BY THE BOARD.

[(b)] (C) Monetary compensation received by the State in conjunction with a wetlands license may not be applied to the State Annuity Bond Fund Account.

[(c)] (D) (1) There is created a special fund, known as the Tidal Wetlands Compensation Fund.

(2) The following money shall be deposited in the Tidal Wetlands Compensation Fund:

(i) Any monetary payment by a licensee in lieu of creating, restoring, or enhancing tidal wetlands that is required by the Department or the Board as a condition of a permit or license;

and (ii) Any penalty imposed by a court in accordance with this title;

(iii) Any penalty imposed by the Department under this title.

[(d)] (E) Funds in the Tidal Wetlands Compensation Fund may be appropriated only for the creation, restoration, or enhancement of tidal wetlands, including:

(1) Acquisition of land or easements;

(2) Maintenance of mitigation sites;

(3) Purchase of credits in mitigation banks;

(4) Management of invasive or nuisance species identified by the Department;

(5) Cost sharing assistance to landowners in the management and control of phragmites under Title 8, Subtitle 21 of the Natural Resources Article; and

(6) Contractual services necessary to accomplish the intent of this subsection.

[(e)] (F) Funds credited and any interest accrued to the Fund:

(1) Shall remain available until expended; and

(2) May not revert to the General Fund under any other provision of law.

[(f)] (G) All monetary compensation paid to the State in conjunction with a wetlands license other than that specified under subsection **[(c)(2)] (D)(2)** of this section shall be deposited in the Wetlands and Waterways Program Fund established under § 5–203.1 of this article.

SECTION 2. AND BE IT FURTHER ENACTED, That the Department of the Environment shall, on or before January 1, 2015, convene a workgroup consisting of interested stakeholders to review and assess whether the wetlands and waterways program, due to the passage of this Act, successfully improved the level of services to the regulated community, including:

(1) Reviewing the number of positions assigned to the program;

(2) Reviewing the program's progress in improving permit turnaround time frames, permit backlogs, and any enhanced services provided to the regulated community as a result of this Act;

(3) Analyzing the long-term funding needs of the wetlands and waterways program;

(4) Determining whether the application fees provided by this Act are adequate to support an effective program; and

(5) Reporting the findings and recommendations of the work group to the Legislative Policy Committee, the House Environmental Matters Committee, and the Senate Education, Health, and Environmental Affairs Committee on or before December 1, 2015, in accordance with § 2-1246 of the State Government Article.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, May 22, 2012.